Jurisdictional Statement

81-1681

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NO. 82-

In The

Supreme Court of the United States

MARCH TERM, 1982

JACOB BROTHERS, INC. AND UNITED STATES FIDELITY & GUARANTY COMPANY
Appellants

V.

LUIS M. DE LEON (VALAZQUEZ)
Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether §31-297(b) of the Connecticut General Statutes, which provides that if an employer does not file a written disclaimer of compensability within 20 days of receipt of an employee's notice of worker's compensation claim "the employer shall be conclusively presumed to have accepted the compensability of such alleged injury or death and shall have no right thereafter to contest the employee's right to receive compensation on any grounds *or the extent of his disability*" [emphasis added] violates the Due Process Clause of the Fourteenth Amendment.

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OPINIONS BELOW

The order of the Supreme Court of the State of Connecticut denying the petitioners' petition for certification is unreported and appears infra at Appendix A, p. 1a. The opinion of the Appellate Session of the Superior Court of the State of Connecticut is as yet unreported and appears at Appendix B, pp. 2a-9a. The opinion of the Compensation Review Division of the State of Connecticut is unreported and appears at Appendix C, pp. 10a-14a. The Finding and Award of the Connecticut Worker's Compensation Commissioner is unreported and appears at Appendix E, pp. 15a-17a.

JURISDICTION

This appeal arises from a proceeding for worker's compensation benefits. The judgment of the Appellate Session of the Superior Court was entered on October 30, 1981 and the Supreme Court of the State of Connecticut denied appellants' petition for certification on December 17, 1981. See infra Appendix pp. 1a-2a. Within ninety days therefrom, the appellants filed their notice of appeal. See Appendix, infra, p. 24a. The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, Section 1257(2).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution provides, in pertinent part, as follows:

> ...No state shall...deprive any person of life, liberty, or property, without due process of law....

STATUTE INVOLVED

Connecticut General Statute §31-297(b), which is printed in Appendix G, p. 22a, infra.

STATEMENT OF THE CASE

The appellee DeLeon while working for the appellant Jacob Brothers, Inc. received an injury to his right foot in August 1974. Appendix E, p. 15a, para. 2. On February 12, 1980, DeLeon's attorney filed a notice of claim for worker's compensation benefits with the Office of the Worker's Compensation Commissioner, sending copies to his employer Jacob Brothers, Inc. and its worker's compensation insurer the United States Fidelity & Guaranty Co. Id., p. 16a, para. 6. When no notice stating that they intended to contest DeLeon's right to compensation was filed by the appellants within 20 days of DeLeon's notice of claim; id., para. 7; DeLeon, on March 17, 1980, filed

a "motion to preclude" the appellants "from contesting the claimant's right to receive compensation *or the extent of his disability* pursuant to §31-297(b) of the Connecticut General Statutes...." Id., para. 8; See Appendix F, p. 18a. Although the appellants did subsequently file a disclaimer on March 25, 1980; Appendix B, p. 16a, para. 9; the worker's compensation commissioner granted the appellee's motion to preclude. Id., p. 17a. The appellee's "motion to preclude"; Appendix F, p. 18a; and the commissioner's order granting that motion were based on §31-297(b) of the Connecticut General Statutes" which provides:

> Whenever liability to pay compensation is contested by the employer, he shall file with the compensation commissioner, on or before the twentieth day after he has received a written notice of claim, a notice in accord with a form presented by the commissioners stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested, and a copy thereof shall be sent to the employee. If the employer or his legal representative fails to file the notice contesting liability within the time prescribed herein, *the employer shall be conclusively presumed to have accepted the compensability of such alleged injury or death and shall have no right thereafter to contest the employee's right to receive compensation on any grounds or the extent of his disability.*

[Emphasis added] Conn. Gen. Stat. §31-297(b).

The appellants appealed to the Connecticut Compensation Review Division and to the Appellate Session of the Superior Court, which tribunals affirmed the decision of the Commissioner. See Appendix C, p. 10a, infra, and Appendix B, p. 2a, infra, respectively. On December 17, 1982, the appellants' petition for certification to the Supreme Court of the State of Connecticut was denied. See Appendix A, p. 1a, infra.

THE QUESTION IS SUBSTANTIAL

INTRODUCTION

This appeal raises the significant and important question of the extent to which a state may bar an employer in a worker's compensation proceeding from exercising the most fundamental rights embodied and guaranteed in the Due Process Clause. Section 31-297(b) of the Connecticut General Statutes works a wholesale forfeiture of due process, expressly providing that, should he file a disclaimer late — regardless how untimely the worker's compensation claim may be (5½ years in the instant case) — the employer "shall have no right thereafter to contest the employee's right to receive compensation *on any grounds or the extent of his disability.*" [Emphasis added.] Because of the trend to bar employer's from litigating material facts in worker's compensation or special compensation proceedings; see e.g. *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1; and the extreme nature of the constitutional deprivation in this case, it is rightfully submitted that the question raised by this appeal warrants review by this Court at this time.

By Precluding The Appellants From Contesting Not Only The Employee's Right To Receive Worker's Compensation But Also The Extent Of The Employee's Disability, §31-297(b) of the Connecticut General Statutes Deprives The Appellants Of Due Process Of Law.

In a series of cases, this Court has held that a statute or administrative regulation may not bar a party from litigating or rebutting any material fact unless the statute or regulation is rationally related to a legitimate governmental purpose. See *Usery* v. *Turner Elkhorn Mining Co.*, supra; *Weinberger* v. *Salfi*, 422 U.S. 749 (1975); *Vlandis* v. *Kline*, 412 U.S. 441 (1972); *Bell* v. *Burson*, 402 U.S. 535 (1975).

Here, the legislative purpose behind §31-297(b) — with which the appellants have no quarrel — has been articulated by the Connecticut Supreme Court:

> The object which the legislature sought to accomplish is plain. Section 31-297(b) was amended to ensure (1) that employers would bear the burden of investigating a claim promptly and (2) that employees would be timely apprised of the specific reasons for the denial of their claim. These effects would, in turn, diminish delays in the proceedings, discourage arbitrary refusal of bona fide claims and narrow the legal issues which were to be contested. To narrow the scope of the controversy would lighten the burden on the claimant in terms of legal expenses, a result which the legislature plainly desired to accomplish by its 1967 amendments. See 12 H.R.Proc., Pt. 9, 1967 Sess., pp. 4037-38; cf. General Statutes §31-298, as amended by Public Acts 1967, No. 242. A general denial that a claimant has a compensable injury reveals no specific defense or reason why the claim is contested. Such a conclusionary statement would leave open numerous possible defenses, such as a defense of lack of employer-employee status, a defense that the death was due to suicide or to homicide or a claim that death was caused by an intervening injury.

Menzies v. *Fisher,* 165 Conn. 338, 343-344, 334 A.2d 452, 455 (1973).

These laudable purposes, however, wholly fail to support the denial of the appellants' right to contest *"the extent of disability"* since the written notice which the statute requires and for which sanctions are imposed explicitly requires *only* a statement "that the right to compensation is contested...and the specific grounds on which the right to compensation is contested"; it does not require a statement that the extent of disability is contested or the grounds on which the extent of disability is con-

tested. Simply put, the written notice which the statute requires employers to file if they wish to contest the compensability of a worker's compensation claim is entirely unrelated to the contestability of the *extent* of the employee's disability. The extinguishment of the employer's right to contest the extent of an employee's disability when an employer, as here, tardily files a disclaimer is an arbitrary and unnecessary forfeiture of the employer's due process, unrelated to any of the legislative purposes articulated by the Connecticut Supreme Court in *Menzies* v. *Fisher,* supra.

In *Bell* v. *Burson,* 402 U.S. 535 (1975), the Court declared unconstitutional a Georgia statute which "provide[d] that the motor vehicle registration and driver's license of an uninsured motorist involved in an accident shall be suspended unless he posts security to cover the amount of damages claimed by aggrieved parties in reports of the accident. The administrative hearing conducted prior to the suspension exclude[d] consideration of the motorist's fault or liability for the accident." Id., pp. 535-536. This Court held that "[s]ince the statutory scheme makes liability an important factor in the State's determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing." *Bell* v. *Burson,* supra, 541.

Similarly, in *Vlandis* v. *Kline,* 412 U.S. 441 (1972), this Court held that:

> ...since Connecticut purports to be concerned with residency in allocating the rates for tuition and fees in its university system, it is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebutable presumption of non-residence, when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination. Rather standards of due process require that the State allow such an individual the opportunity to present evidence showing that he is a bona

> fide resident entitled to the in-state rates. Since [the Connecticut statute] precluded the appellees from ever rebutting the presumption that they were non-residents of Connecticut, that statute operated to deprive them of a significant amount of their money without due process of law.

Vlandis v. *Kline,* supra, 452; see also *Stanley* v. *Illinois,* 405 U.S. 645 (1971), holding that it was a denial of the equal protection guaranteed by the Fourteenth Amendment for a State to deny a hearing on parental fitness to an unwed father when such a hearing was granted to all other parents whose custody of their children was challenged."

The extent of the constitutional deprivation in the instant case can hardly be overstated. Since "the employer shall be conclusively presumed to have accepted the compensability of [the] alleged injury...and shall have no right thereafter to contest the employee's right to receive compensation on any grounds or the extent of his disability"; Conn. Gen. Stat. §31-297(b); there is *nothing* which the employer may even be heard upon. Assuming the employer may even be permitted into the hearing room, he must sit constitutionally bound and gagged while the employee seeks not only to maximize his award from the employer but potentially, to relate every ailment imaginable to his injury — everything from hangnail to heart attacks.

CONCLUSION

The trend barring employers and their insurers from litigating the most material facts in worker's compensation cases and erecting irrebutable presumptions in this area is unmistakable. Yet, as the Appellate Session of the Superior Court in this very case conceded, "it is intellectually impossible to articulate accurately the doctrinal underpinnings of the Supreme Court's recent decisions in the irrebutable presumption area." Appendix B, p. 5a, infra. A clear statement by this Court in this case is necessary to protect the most basic and elementary due process rights of employers and their worker's compensation insurers. The single and narrow issue presented by this appeal is substantial and merits plenary consideration by the Court.

Probable jurisdiction should be noted.

Respectfully submitted,

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Appendix

NO. 82-

In The

Supreme Court of the United States

MARCH TERM, 1982

JACOB BROTHERS, INC. AND UNITED STATES FIDELITY & GUARANTY COMPANY
Appellants

VS.

LUIS M. DeLEON (VALAZQUEZ)
Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

APPENDIX

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March , 1982

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APPENDIX A

NO. A.S. 1094 : SUPREME COURT

LUIS M. DELEON (VALAZQUEZ) : STATE OF CONNECTICUT

VS

JACOB BROTHERS, INC., AND UNITED STATES FIDELITY & GUARANTY CO. : DECEMBER 16, 1981

ORDER DENYING CERTIFICATION

THE DEFENDANT'S HAVING FILED A PETITION FOR CERTIFICATION AND THE COURT HAVING CONSIDERED SAID PETITION FINDS THAT IT SHOULD BE DENIED.

WHEREUPON IT IS ORDERED THAT SAID PETITION BE AND IT HEREBY IS DENIED.

BY THE COURT

/s/Donald H. Dowling
DONALD H. DOWLING

NOTICE SENT: DECEMBER 17, 1981
Mihaly & Mihaly
Donald C. Cousins
Clerk, Compensation review Division

APPENDIX B

APPELLATE SESSION OF THE SUPERIOR COURT

May Term, 1981

A.S. 1094

LUIS M. DE LEON (VELAZQUEZ) v. JACOB BROTHERS, INC., ET AL

Argued: May 19, 1981 *Decided:* October 30, 1981

Appeal by the defendants from a finding and award of the workers' compensation commissioner for the fourth district, brought to the compensation review division; from a decision dismissing the appeal, the defendants, Jacob Brothers, Inc. and U.S. Fidelity & Guaranty Co., have appealed to this court. *No error.*

Bruce L. Levin, for the appellants (defendants).

Donald C. Cousins, for the appellee (plaintiff).

COVELLO, J. The plaintiff in this action seeks workers' compensation benefits as the result of an injury alleged to have occurred in August, 1974, when his right foot and ankle struck the edge of a skid while he was moving a barrel at his place of employment. The defendant employer, Jacob Brothers, Inc., furnished medical care to the plaintiff on the date of the injury.

On February 12, 1980 the plaintiff filed a notice of claim with his employer.[1] On march 7, 1980 he filed a motion to preclude

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[1]Conn. General Statutes (Rev. of 1958, Rev. to 1973), §31-294. *"Notice of injury and of claim for compensation.* Any employee who has sustained an injury in the course of his employment shall forthwith notify his employer, or some person representing him, of such injury;..."

the defendants from contesting liability, alleging that his employer had not filed a notice that his claim for compensation was contested within the required twenty days.[2]

By his finding and award, the compensation commissioner granted the plaintiff's motion to preclude and found that the plaintiff had indeed suffered a compensable injury to his right foot arising out of and in the course of his employment with the defendant. The defendants appealed to the compensation review division, which thereafter affirmed the compensation commissioner's decision in its entirety.

The employer and its insurer have appealed to this court. They contend that the provisions of General Statutes § 31-297(b) violate their rights to procedural due process and the equal protection of the laws in derogation of the state and federal constitutions. They further contend that since no written notice of claim was required under General Statutes § 31-294, no notice contesting compensation was required by General Statutes § 31-297(b). We conclude that these claims are without merit.

I.

General Statutes § 31-297(b) provides that an employer who contests liability to pay compensation must file a prescribed notice to that effect within twenty days after his receipt of a written notice of claim. Having failed to do so within the prescribed time, the employer is "conclusively presumed" to have

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[2]Conn. General Statutes (Rev. of 1958, Rev. to 1973), § 31-297. "*Hearing of claims*....(b) Whenever liability to pay compensation is contested by the employer, he shall file with the compensation commissioner, on or before the twentieth day after he has received a written notice of claim, a notice...stating that the right to compensation is contested,..."

accepted the compensability of the injury and loses his right to contest not only the liability, but also the extent of the injury.[3]

"Statutes creating permanent irrebuttable presumptions which are neither necessarily nor universally true, are disfavored under both the Fifth and Fourteenth Amendments, because they preclude individualized determination of the facts upon which substantial rights or obligations may depend. *Vlandis* v. *Kline,* 412 U.S. 441, 93 S. Ct. 2230, 37 L. Ed. 2d 63 (1974." *Coleman* v. *Darden,* 595 F.2d 533, 536 (10th Cir. 1979).

"A presumption of law must be based upon facts of universal experience and be controlled by inexorable logic." *Ducharme* v. *Putnam,* 161 Conn. 135, 140, 285 A.2d 318 (1971). To be constitutionally valid there must be a "rational connection between the fact proved and the ultimate fact presumed...." *Tot* v. *United States,* 319 U.S. 463, 467-68, 63 S. Ct. 241, 87 L. Ed. 1519 (1942). The United States Supreme Court "has held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." *Heiner* v. *Donnan,* 285 U.S. 312, 328-29 52 S. Ct. 358, 76 L. Ed. 772 (1931).

The broad scope of this irrebuttable presumption doctrine has been significantly narrowed, however, in more recent decisions involving economic areas. In *Weinberger* v. *Salfi,* 422 U.S. 749, 95 S. Ct. 2457, 45 L. Ed. 2d 522 (1975), the Supreme

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[3]Conn. General Statutes (Rev. of 1958, Rev. to 1973), § 31-297. "*Hearing of claims*....(b) Whenever liability to pay compensation is contested by the employer, he shall file with the compensation commissioner, on or before the twentieth day after he has received a written notice of claim, a notice...stating that the right to compensation is contested,.... If the employer...fails to file the notice contesting liability within the time prescribed herein, *the employer shall be conclusively presumed* to have accepted the compensability of such alleged injury or death and shall have no right thereafter to contest the employee's right to receive compensation on any grounds or the extent of his disability." (Emphasis added).

Court upheld a federal statute precluding survivors from receiving Social Security benefits unless the claimant's relationship to the wage earner existed at least nine months before his death. Thereafter, in *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 96 S. Ct. 2882, 49 L. Ed. 2d 752 (1976), the court validated a federal law creating two irrebuttable presumptions concerning miners' disability and death from complicated pneumoconiosis.

While it is intellectually impossible to articulate accurately the doctrinal underpinning of the Supreme Court's recent decisions in the irrebuttable presumption area,[4] "congressional judgments in the form of 'irrebuttable presumptions' in the economic area will be upheld where there is *a rational relationship between the criteria set forth in the statutory mandate and a legitimate congressional purpose.*" *Sakol* v. *Commissioner of Internal Revenue,* 574 F.2d 694, 697 (2d Cir. 1978) (Emphasis added).

In *Menzies* v. *Fisher,* 165 Conn. 338, 334 A.2d 452 (1973), the Connecticut Supreme Court reviewed the legislative history of § 31-297(b) and found, at page 342, that the act "sought to correct some of the glaring inequities and inadequacies of the Workmen's Compensation Act. Among the defects...were the needless, prejudicial delays in the proceedings..., delays by employers or insurers in the payment of benefits, lack of knowledge on the part of employees that they were entitled to benefits and the general inequality of resources available to claimants with bona fide claims." The court found that the object of the twenty day rule was "to ensure (1) that employers would bear the burden of investigating a claim promptly and (2) that employees would be timely apprised of the specific reasons for the denial of their claim. These effects would, in turn, diminish

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[4]See *The Irrebuttable Presumption Doctrine in the Supreme Court,* 87 Harv. L. Rev. 1534, 1544-56 (1974). See also L. Tribe, *American Constitutional Law* § 16-32, 1095-96 n.25 (1978); *Irrebuttable Presumptions: An Illusory Analysis,* 27 Stamford L. Rev. 449 (1974); *Constitutional Law-The Conclusive Presumption Doctrine,* 54 N.C. L. Rev. 469 (1976).

delays in the proceedings, discourage arbitrary refusal of bona fide claims and narrow the legal issues which were to be contested." Id., 343. The court concluded that "[t]his rule is inequitable because employers and insurers have the necessary resources to fulfill its mandate,..." Id., 345.

The statute and its legislative history were thereafter reexamined in *Adzima* v. *UAC/Norden Division,* 177 Conn. 107, 411 A.2d 924 (1979). The court there concluded that the twenty day rule applied only to cases where liability was contested, and not to situations where the extent of the medical disability was in dispute. In neither *Menzies* nor *Adzima* was the legitimacy of the legislative purpose of the means adopted to effect that end challenged by either the appellants or the Supreme Court. We see no reason to do so now.

We conclude that the statute in question is economic in nature, that it articulates a legitimate legislative purpose and that the means adopted to produce the result bear a rational relationship to the stated purpose of the statute. This being the case, the conclusive presumption is entitled to be examined within the less expansive prohibitions found in *Weinberger* v. *Salfi* and *Usery* v. *Turner Elkhorn Mining Co.,* supra. When examined within that context, the legislation is found to be constitutionally valid.

II.

The commissioner found that the employer furnished medical services to the claimant within one year of the injury and that the required notice of claim by the employee was therefore unnecessary.[5] Since the written notice of claim was in fact unnecessary, the appellants now argue, as a necessary corollary, that the notice contesting liability required by § 31-297(b), was also unnecessary. They argue, therefore, that they ought not to be penalized for failing to file a disclaimer in response to a notice that was not required. This argument misconstrues the purposes of the two statutes and seeks to establish a relationship between the two which does not exist.

The entitlement to compensation from an employer for employment-related injuries is solely a function of legislative enactment. To be eligible for participation in compensation proceedings, the employee is required under § 31-294 to 1) forthwith notify his employer of his injury and 2) file a written notice of claim within the prescribed period. A notice of claim is not required if 1) a hearing procedure is seasonably set in motion, 2) a voluntary agreement is reached and submitted by the parties or, 3) medical or surgical care for the injury is supplied by the employer within the applicable time.

Among its other purposes, two obvious functions of § 31-294 are to advise the employer of the fact that his employee has suffered a job-related injury and to limit his liability to those

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[5]Conn. General Statutes (Rev. of 1958, Rev. to 1973) § 31-294 "*Notice of injury and of claim for compensation.* Any employee who has sustained an injury in the course of his employment shall forthwith notify his employer,... No proceedings for compensation...shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident.... If there has been a hearing or a written request for a hearing or an assignment for a hearing within said one-year period..., or if a voluntary agreement has been submitted..., or if...an employee has been furnished, for the injury..., with medical or surgical care as hereafter provided in this section,..."

injuries that are reported in a timely fashion. The statute's mandate to the employee in this regard is clear and vitally important for "[n]o proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given [as specified]..." The exceptions to this requirement shall bear the common denominator of articulating circumstances under which the employer would have to be aware of the injury within the prescribed period. It is clear that these portions of § 31-294 are designed to protect the employer by insulating him from all but timely filed injury claims.

On the other hand, § 31-297(b) is designed for the protection of the employee. The statute was amended "to ensure (1) that employers would bear the burden of investigating a claim promptly and (2) that employees would be timely apprised of the specific reasons for the denial of their claim." *Menzies* v. *Fisher,* supra, 343.

The fact that the employer's interest in this case was protected under § 31-294 without the requirement of a timely written notice of claim, does not compromise the employee's right to know under § 31-297(b) whether his employer was contesting his compensation claim. Although both statutes refer to a notice of claim, their respective purposes are different. The fact that a written notice of claim was not required to fulfill the requirements of § 31-294, did not relieve the employer from the burdens imposed by the provisions of § 31-297(b) after a written notice of claim was furnished.

III.

The appellants further argue that the appellee is equitably estopped from pleading the preclusive provisions of § 31-297(b) because counsel mailed the notice of claim to the defendant's office in Wethersfield when he knew that the defendant also had an office in Milford which customarily handled Bridgeport claims. "Estoppel rests on the misleading conduct of one party to the prejudice of the other." *Jensen* v. *Nationwide Mutual*

Ins. Co., 158 Conn. 251, 262, 259 A.2d 598 (1969). The appellants do not explain, nor are we able to infer, how the use of the Wethersfield address constituted misleading conduct. We conclude that no factual basis is shown for invoking this equitable doctrine.

Finally, the appellants contend that the commissioner erroneously permitted the introduction of documentary medical evidence "without any semblance of a foundation."[6] Proceedings before the workers' compensation commissioner are specifically governed by legislative enactment, which authorizes the commissioner to proceed "in accordance with the rules of equity. He shall not be bound by the *ordinary common law or statutory rules of evidence...*, but shall make inquiry in such manner, through oral testimony *or written and printed records,* as is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit of this chapter." (Emphasis added).[7] We conclude that the commissioner's use of medical evidence in question falls within the broad latitude extended to him by the statute. See *Manfredi* v. *United Aircraft Corporation,* 138 Conn. 23, 25, 81 A.2d 448 (1951).

There is no error.

In this opinion SHEA and BIELUCH, Js., concurred.

Covello, J.

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[6] *Appellants' Brief* — p. 15.

[7] Conn. General Statutes (Rev. of 1958, Rev. to 1973) §31-298.

Date of Judgment — October 30, 1981

Counsel Notified — October 30, 1981

Patricia Friedl
Assistant Clerk — Appellate

APPENDIX C

LUIS M. DeLEON (VELAZQUEZ) : COMPENSATION REVIEW DIVISION
Workers' Compensation Commission
APPELLEE

vs.

JACOB BROTHERS, INC. : Case No. 23-CRD-4-80
EMPLOYER

and

U.S. FIDELITY & GUARANTY COMPANY
RESPONDENTS : JANUARY 26, 1981
APPELLANTS

APPEARANCES: The claimant-appellee was represented by Donald C. Cousins, Esq., 855 Main St., Bridgeport, CT 06601. The respondent-appellants were represented by Serge G. Mihaly, Esq., 815 Main St., Bridgeport, CT 06604.

This Petition for Review from the July 3, 1980 Decision of the Commissioner for the Fourth District was argued December 5, 1980 before a Compensation Review Division Panel consisting of Commissioners Loeb, Waller and Kolinsky.

FINDING AND AWARD AND CONCLUSIONS OF LAW

1-11 Paragraphs 1 through 11, both inclusive of the Fourth District Commissioner's July 3, 1980 Decision are hereby affirmed and incorporated into the Compensation Review Division's Finding and Award and Conclusions of Law.

A.B. Paragraphs A and B of the July 3, 1980 Commissioner's Order and Award are hereby affirmed.

C. The Appeal from the Fourth District Commissioner's Finding and Award is DISMISSED.

/s/ Rhoda Loeb
RHODA LOEB, COMMISSIONER

/s/ Robin Waller
ROBIN WALLER, COMMISSIONER

/s/ Gerald Kolinsky
GERALD KOLINSKY, COMMISSIONER

APPENDIX D

MEMORANDUM OF DECISION

This matter came before the Fourth District Commissioner when claimant-appellee filed a Motion To Preclude, which the Commissioner granted, after taking evidence; the Commissioner then going on to make a finding of compensability for a 1974 injury arising out of and in the course of employment. From such Finding and Award, the respondent-appellants have appealed.

The main thrust of respondent-appellants argument involves the interrelationship of Sections 31-294 and 31-297(b), of the Connecticut General Statutes.

The operative facts of this matter are as follows: In 1974, the claimant-appellee injured his right foot during and in the course of his employment with the employer-respondent-appellant. He was directed by the employer to physicians, and underwent surgery in 1974. In 1979, he again underwent surgery to the right foot.

On February 12, 1980, for the first time, written notice of claim for compensation for the 1974 injury, and the later consequences thereof, was mailed to the insurer-respondent-appellant, United States Fidelity & Guaranty Company. Said insurer filed a disclaimer of compensation on March 25, 1980, alleging that written notice of the accident was not given within one year and that the injury did not arise out of the employment.

The Commissioner found that the employer had, within one year from the date of the accident, on the day of the injury in fact, furnished medical or surgical care to the claimant-appellee, thus eliminating the requirement of written notice under Section 31-294, C.G.S.

It is this last finding with which the respondent-appellants are in total disagreement.

The respondent-appellants' arguments that Section 31-294, C.G.S., is jurisdictional, and unless complied with, forecloses action on a claim thereunder by the Commissioner, are faulty in that they fail to recognize the several exceptions enumerated therein. Clearly if 1) there has been a hearing or a written request for a hearing or an assignment for a hearing written within one year from the date of the accident, or 2) if a Voluntary Agreement has been submitted within said one year period, or 3) if the employee has been furnished with medical or surgical care (as in the instant case), "no want of such notice of claim shall be a bar to the maintenance of proceedings...."

The respondent-appellant contends that Section 31-297(b) is unconstitutional. We point to the fact the Supreme Court has interpreted that particular Section on at least three occasions, *Menzies* v. *Fisher,* 165 Conn. 338 (1973); *Balkus* v. *Terry Steam Turbine,* 167 Conn. 170, 178, Footnote 7 (1974), and *Adzima* v. *UAC/Norden Division,* 177 Conn. 107 (1979).

In no instance was there any indication of a reservation with the Statute. Quite to the contrary, in *Menzies* v. *Fisher,* 165 Conn. 338 (1973), there is extensive discussion of the salutory and beneficial aspects of the Statute. Recognizing the unequal position of an injured employee in regard to his employer, the Court pointed to the equalizing effect of the Statute, "It is up to the employer to investigate the claim forthwith and either to concede its compensability or to reveal concrete reasons for contesting that claim. This rule is equitable because employers and insurers have the necessary reserves to fulfill its mandate, whereas the claimant often receives no more assistance than that furnished by the Commissioner in filing his claim. Furthermore, the Statute now helps fulfill the major legislative design of the 1967 amendments in that it removes obstacles which tend to discourage valid claims." "id at 345."

The Supreme Court has not favored certain statutes with conclusive presumptions which deprive parties of property or rights without the opportunity to raise defenses or to fair hearing. Such a situation was presented to the Court in *Ducharme* v.

City of Putnam, 161 Conn. 135 (1971). However, Section 31-297(b), unlike Section 7-433a, does not preclude an employer from raising a defense to a workers' compensation claim, as long as he complies with the other terms of the Statute which, as the Court stated above, are fair and equitable.

The appeal is hereby DISMISSED.

/s/ Rhoda Loeb
RHODA LOEB, COMMISSIONER

/s/ Robin Waller
ROBIN WALLER, COMMISSIONER

/s/ Gerald Kolinsky
GERALD KOLINSKY, COMMISSIONER

APPENDIX E

LUIS DeLEON (VELAZQUEZ) CLAIMANT	:	C O R A M
	:	WORKERS' COMPENSATION
vs.		COMMISSIONER
JACOB BROTHERS, INC. Bridgeport, Connecticut (Employer)	:	FOURTH COMPENSATION DISTRICT
and		
U.S. FIDELITY & GUARANTY CO. 123 Main Street Milford, Connecticut RESPONDENTS	:	JULY 3, 1980

Appearances:

The claimant was represented by Attorney Donald C. Cousins, 855 Main Street, Bridgeport, Connecticut.

The respondents were represented by Attorney Serge Mihaly, 815 Main Street, Bridgeport, Connecticut.

FINDING AND AWARD

1. Pursuant to proper notice to all parties, hearings in the above captioned matter were held April 9, and June 30, 1980.

2. The claimant received an injury to his right foot in August 1974 during and in the course of his employment with the employer respondent.

3. His employer sent him to Dr. Coleman Lopatin who in turn sent him to Dr. Carlos Peralta, both physicians of Bridgeport.

4. Claimant underwent surgery in 1974.

5. Again in 1979 claimant underwent surgery on his right foot by Dr. Anthony Camarda, a Bridgeport orthopedic surgeon.

6. On February 12, 1980, the claimant's counsel sent a written notice of claim for compensation via U.S. certified mail to the office of the Commissioner for the Fourth District, Jacob Brothers, Inc. at 1240 Seaview Avenue, Bridgeport, Connecticut, and to the insurer respondent United States Fidelity and Guaranty Company at 225 Spring Street, Wethersfield, Connecticut.

7. No disclaimer was filed by the respondents as of March 7, 1980, 22 days after the written notice of claim was received in the office of the Fourth District.

8. The claimant filed a Motion to Preclude respondents from contesting compensability on March 17, 1980 in the Fourth District office.

9. On Ma h 25, 1980 the respondents filed a disclaimer alleging:

"(1) Written notice not given within one year.

(2) Injury did not arise out of employment."

10. Under Section 31-294, C.G.S. furnishing of medical attention by the employer within a year of injury becomes the statutory equivalent of written notice, "constructive notice" if we will, and such provision eliminates the requirement of written notice within a year to confer jurisdiction upon the Commissioner.

11. Such medical attention was furnished by the employer within the year, on the day of injury, in fact.

WHEREFORE IT IS ORDERED, DECREED, AWARDED and ADJUDGED THAT:

A. Claimant's Motion to Preclude is granted.

B. The claimant suffered a compensable injury to his right foot in August of 1974 arising out of and in the course of his employment with respondent.

/s/ John Arcudi
John Arcudi

COMMISSIONER
FOURTH COMPENSATION DISTRICT

APPENDIX F

LUIS M. DE LEON, Claimant	:	OFFICE OF WORKERS'
VS.	:	COMPENSATION COMMISSION
JACOB BROTHERS, INC.	:	FOURTH CONGRESSIONAL DISTRICT
and		
UNITED STATES FIDELITY & GUARANTY CO.	:	MARCH 7, 1980
Respondents		

MOTION TO PRECLUDE

The Claimant in the above-captioned matter respectfully moves than an Order Issue precluding the Respondents from contesting the Claimant's right to receive compensation on any grounds or the extent of his disability for the following reasons:

A written notice of claim was duly served upon the Respondent-Employer and Respondent-Insurer by letter dated February 12, 1980 (Schedule A). Said notice of claim was served by certified mail and a return receipt was received from the Respondent-Employer dated February 14, 1980 (Schedule B) and from the Respondent-Insurer dated February 14, 1980 (Schedule C).

Respondents have not filed a written notice contesting liability to pay compensation on or before the twentieth day following receipt of the said written notice of claim.

Respondents are therefore precluded from contesting the claimant's right to receive compensation or the extent of his disability pursuant to Sec. 31-297 (b) of the Connecticut General Statutes and *Menzies* vs. *Fisher,* (1973) 334, A. 2nd, 452, 165 Conn. 338.

CLAIMANT, De Leon
By: /s/Donald C. Cousins
Donald C. Cousins
His Attorney

APPENDIX G
Connecticut General Statutes

§ 31-294. Notice of injury and of claim for compensation

Any employee who has sustained an injury in the course of his employment shall forthwith notify his employer, or some person representing him, of such injury; and, on his failure to give such notice, the commissioner may reduce the award of compensation proportionately to any prejudice which he finds the employer has sustained by reason of such failure; but the burden of proof with respect to such prejudice shall rest upon the employer. No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation is given within one year from the date of the accident or within three years from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death has resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents, or the legal representative of the deceased employee, may make claim for compensation within such two-year period or within one year from the date of death, whichever is later. Such notice may be given to the employer or the commissioner and shall state, in simple language, the date and place of the accident and the nature of the injury resulting therefrom, or the date of the first manifestation of a symptom of the occupational disease and the nature of such disease, as the case may be, and the name and address of the employee and of the person in whose interest compensation is claimed. If there has been a hearing or a written request for a hearing or an assignment for a hearing within said one-year period from the date of the accident or within said three-year period from the first manifestation of a symptom of the occupational disease, as defined herein as the case may be, or if a voluntary agreement has been submitted within the applicable said period, or if within the applicable said period an employee has been furnished, for the injury with respect to which compensation is claimed, with medical or surgical care as hereafter provided in this section, no want of such notice of claim shall be

a bar to the maintenance of proceedings and in no case shall any defect or inaccuracy of such notice of claim be a bar to the maintenance of proceedings unless the employer shows that he was ignorant of the facts concerning such personal injury and was prejudiced by the defect or inaccuracy of such notice. Upon satisfactory showing of such ignorance and prejudice, the employer shall receive allowance to the extent of such prejudice. Within one week after receipt by an employer of such notice of claim for compensation, he shall report the substantial facts of such notice to the commissioner. For the purposes of this section, "manifestation of a symptom" means its manifestation to the employee claiming compensation, or to some other person standing in such relation to him that the knowledge of such a person would be imputed to him, in such manner as is or ought to be recognized by him as symptomatic of the occupational disease for which compensation is claimed. The employer, as soon as he has knowledge of any such injury, shall provide a competent physician or surgeon to attend the injured employee and, in addition, shall furnish such medical and surgical aid or hospital or nursing service as such physician or surgeon deems reasonable or necessary. Such physician or surgeon shall be selected by the employee from an approved list of physicians and surgeons prepared by the commissioners, but, if such employee is unable to make the selection, the employer shall do so, subject to ratification by the employee or his next of kin, provided, however, where the employer has a full-time staff physician or a physician is available on call, the initial treatment required immediately following the injury may be rendered by such physician, but the employee may thereafter select his own physician as provided by this chapter for any further treatment without prior approval of the commissioner. In the event of the failure of the employer promptly to provide such physician or surgeon or medical, surgical or hospital or nursing service, the injured employee may provide such physician or surgeon, selected from the approved list prepared by the commissioners, or medical, surgical or hospital or nursing service at the expense of the employer; or, at his option, the injured employee may refuse the medical, surgical and hospital or nursing service provided by his employer and provide the same at his own expense. The

commissioner may, without hearing, at the request of the employer or the injured employee, when good reason exists, or on his own motion, authorize or direct a change of such physician or surgeon or such hospital or nursing service. If it appears to the commissioner that an injured employee has refused to accept and failed to provide such reasonable medical, surgical or hospital or nursing service, all rights of compensation under the provisions of this chapter shall be suspended during such refusal and failure. The pecuniary liability of the employer for the medical and surgical service herein required shall be limited to such charges as prevail in the same community or similar communities for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person; but the liability of the employer for hospital service shall be the amount it actually costs the hospital to render the service, such amount to be determined by the commissioner, except in the case of state humane institutions, in which case the liability of the employer shall be the per capita cost as determined by the comptroller undr the provisions of section 17-295. In the case of a seaman employed upon any enrolled vessel of the United States and entitled, by the provisions of any law of the United States, to medical or surgical aid or hospital or nursing service without charge, such medical or surgical aid or hospital or nursing service may be substituted for that provided for in this section so far as it may answer the requirements of the provisions of this section, but nothing herein shall excuse the employer in such cases from giving emergency treatment when required; and any employer desiring to take advantage of this provision shall ascertain that such services as are provided for by the laws of the United Sates are rendered. All medical reports concerning any injury of an employee sustained in the course of his employment shall be furnished the employer or employee or his attorney at the request of such employer, employee or attorney. "Nursing," as used herein, means the practice of nursing as defined in subsection (a) of section 20-87, and "nurse" means a person engaged in such practice. "Medical and surgical aid or hospital and nursing service," for the purposes of this chapter, shall, when so requested by the injured employee and approved by the commissioner, include treatment

by prayer or spiritual means through the application or use of the principles, tenets or teachings of any established church without the use of any drug or material remedy, provided sanitary and quarantine regulations are complied with, and provided all those ministering to the injured employee are bona fide members of such church. Such employee shall submit to all physical examinations as required by this chapter.

Connecticut General Statutes §31-297

...(b) Whenever liability to pay compensation is contested by the employer, he shall file with the compensation commissioner, on or before the twentieth day after he has received a written notice of claim, a notice in accord with a form prescribed by the commissioners stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested, and a copy thereof shall be sent to the employee. If the employer or his legal representative fails to file the notice contesting liability within the time prescribed herein, the employer shall be conclusively presumed to have accepted the compensability of such alleged injury or death and shall have no right thereafter to contest the employee's right to receive compensation on any grounds or the extent of his disability.

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX H

NO. A.S. 1094

LUIS M. DELEON (VALAZQUEZ)

VS.

JACOB BROTHERS, INC., AND UNITED STATES FIDELITY & GUARANTY CO.

APPELLATE SESSION OF THE

SUPERIOR COURT OF THE

STATE OF CONNECTICUT

FEBRUARY 1, 1982

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Jacob Brothers, Inc. and United States Fidelity & Guaranty Co., the appellants above-named, hereby appeal to the Supreme Court of the United States from the final judgment of the Appellate Session of the Superior Court, affirming the decision of the Compensation Review Division, entered in this proceeding on December 17, 1981, as to which judgment the Supreme Court of the State of Connecticut, denied certification on December 16, 1981.

This appeal is taken pursuant to Title 28, United States Code, Sec. 1257, subparagraph (2).

Dated at Bridgeport, Connecticut, this 1st day of February, 1982.

/s/Bruce L. Levin

Bruce L. Levin #100807
144 Golden Hill St., Suite 521
Bridgeport, CT. 06604
Tele: 367-9460
ATTORNEY FOR APPELLANTS

CERTIFICATION

This is to notify that a copy of this pleading has been mailed via United States Mail, postage pre-paid, to Donald C. Cousins, 855 Main Street, Bridgeport, CT. 06604, attorney for the plaintiff-appellee, and to the Attorney General of the State of Connecticut, 30 Trinity Street, Hartford, CT. 06115.

/s/Bruce L. Levin
Bruce L. Levin

NO. A.S. 1094

LUIS M. DELEON (VALAZQUEZ)

VS.

JACOB BROTHERS, INC., AND UNITED STATES FIDELITY & GUARANTY CO.

APPELLATE SESSION OF THE

SUPERIOR COURT OF THE

STATE OF CONNECTICUT

FEBRUARY 1, 1982

REQUEST FOR CERTIFICATION AND TRANSMISSION OF RECORD

To the Chief Clerk of the Appellate Session of the Superior Court:

Pursuant to Rule 12(1) of the Rules of the Supreme Court, you are hereby requested by Jacob Brothers, Inc. and the United States Fidelity & Guaranty Company, appellants, to certify and transmit to the Supreme Court of the United States the entire record herein.

Dated at Bridgeport, Connecticut, this 1st day of February, 1982.

/s/Bruce L. Levin

Bruce L. Levin #100807
144 Golden Hill St., Suite 521
Bridgeport, CT. 06604
Tele: 367-9460
ATTORNEY FOR APPELLANTS

CERTIFICATION

This is to certify that a copy of this pleading has been mailed via United States Mail, postage pre-paid, to Donald C. Cousins, 855 Main St., Bridgeport, CT. 06604, attorney for the plaintiff-appellee, and to the Attorney General of the State of Connecticut, 30 Trinity Street, Hartford, CT. 06115.

/s/Bruce L. Levin

Bruce L. Levin